

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:17-CV-187-BO

PASSPORT HEALTH, LLC,)
Plaintiff,)
v.)
AVANCE HEALTH SYSTEM, INC.,)
Defendant.)

ORDER

This cause comes before the Court on defendant's motion for attorney fees. [DE 89]. The appropriate response and reply have been filed, and the motion is ripe for ruling. On January 11, 2019, plaintiff noticed an appeal of this Court's order granting defendant's motion for summary judgment, and the appeal remains pending before the court of appeals.

In light of the "sound policy . . . to wait until a controversy is finally decided on the merits to . . . determine who is the 'prevailing party,'" *Furman v. Cirrito*, 782 F.2d 353, 355-56 (2d Cir. 1986), the Court DENIES defendant's motion for attorney fees WITHOUT PREJUDICE, and grants permission to refile and incorporate its prior filings by reference following the issuance of the mandate of the court of appeals, if appropriate. The related motions to seal documents filed in support of or opposition to the motion [DE 94 & 104] are GRANTED.

SO ORDERED, this 7 day of March, 2019.


TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE